IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5134 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PORBANDAR NAGARPALIKA

Versus

KOKILABEN R MEHTA

Appearance:

1. Special Civil Application No. 5134 of 2001

MS KRINA THAKKAR FOR MR YOGESH S LAKHANI

for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 10/08/2004

ORAL JUDGEMENT

1.0 The petitioner Nagarpalika has challenged the award dated 03/04/2001 passed by the Labour Court, Junagadh in Recovery Application No.466/1992, at Annexure `A' to the petition, whereby the petitioner was directed to pay Rs.34,500/- to the respondent employee from the date of application along with interest at the rate of 6% per annum within 30 days of the date of the order.

2.0 The respondent employee was working with the petitioner Nagarpalika as a Social Worker and submitted her resignation on 10/10/1990. After getting retired from service, the respondent employee approached the Labour Court, Junagadh, claiming that she was entitled for a higher pay-scale. The respondent submitted several representations to the petitioner Nagarpalika to that effect. Ultimately, by order dated 03/04/2001, the Labour Court passed the above award which is under challenge before this Court in this petition.

3.0 Ms.Krina Thakkar learned advocate for the petitioner Nagarpalika has contended that the Labour Court has entertained the application under Section 33-C(2) of the Industrial Disputes Act, 1947 without there being any adjudication in favour of the respondent employee. She produces a copy of the order of the State Government dated 23/06/2004, which is taken on record. She has therefore submitted that even if the decision of the Labour Court is there, the same is required to be quashed and set aside as it is without jurisdiction, inasmuch as sanction is not granted by the State Government.

3.1 Ms.Thakkar has relied upon a decision of this Court in the case of State of Gujarat & Anr. v. Sendhaji S. Thakor & Anr. reported in 1999 (1) G.L.H. 513, wherein it has been held that in absence of an award, order or an adjudication in favour of a workman and crystallization of the amounts due thereto, no applications under Section 33-C(2) of the I.D. Act are maintainable and that unless and until an adjudication is made, an application u/s.33-C(2) cannot be filed for the recovery of the amounts which are yet not ascertained.

3.2 Ms.Thakkar has also placed reliance on the decision of the Apex Court in the case of State Bank of India v. Ram Chandra Dubey & Ors. reported in (2001) 1 S.C.C. p.73, wherein it has been held that the Labour Court has jurisdiction under Section 33-C(2) and it extends to computation of a pre-existing benefit or one flowing from a pre-existing right and not to computation of a benefit which is considered just and proper. In the present case, the Circular dated 17th October, 1988 was not pre-existing right and it was required to be ascertained by the competent authority.

3.3 Ms.Thakkar has relied upon a decision of this Court in the case of Milan Cinema & Anr., v. Maganlal Nathalal Mistry, reported in 1999 Labour Law Journal

p.220, wherein, it is held that proceeding under Section 33-C(2) is in the nature of execution proceedings where right to receive money or benefit is already determined or admitted and the question is only to the quantum of money or benefit which is to reach the recipient. The question as to entitlement is beyond the scope of enquiry under Section 33-C(2). The Labour Court has therefore no jurisdiction to entertain application under Section 33-C (2) and embark upon an enquiry once issue clearly before it was about entitlement of the claimant to any right. In the present case when the petitioner has disputed the relationship of master and servant, the Labour Court has committed a serious error in entertaining the application. The right to receive money or benefit is not determined or admitted and therefore, the question as to entitlement is beyond the scope of enquiry under Section 33-C(2).

3.4 Ms.Thakkar has relied upon a decision of this Court in the case of Naranji Peraji Trans. Co. v. R.B. Waghela, reported in 1998 (2) G.L.R. p.984, wherein it is specifically held that the Labour Court could not have entertained the application since it involved task of adjudicating whether workman actually worked on Sundays and whether he was entitled to the other claims. In the present case also there was no adjudication as to the entitlement of the workmen in respect of certain leave and other benefits as claimed by then, In absence of such prior adjudication the Labour Court should not have entertained the application of the respondents which is contrary to law.

3.5 Ms.Thakkar has next relied upon a decision of this Court in the case of Gujarat Water Supply and Sewerage Board v. Ketanbhai Dinkarray Panday, reported in 2003 (3) G.L.R. p.2281. In that decision, this Court held that recovery application to the Labour Court claiming overtime without the same being adjudicated by the authority under the Minimum Wages Act, is not directly maintainable under Section 33-C (2) of the Act. Therefore, the order of the Labour Court was set aside.

4.0 Mr.P H Pathak learned advocate for the respondent employee has submitted that it may be kept open for the respondent employee to challenge the said order of the State Government by way of filing appropriate application.

5.0 I have heard the learned advocates for the parties and have gone through the averments made in the petition. The petitioner has placed on record the

decision of the State Government dated 23/06/2004. After having gone through the said order of the State Government, I am of the opinion that the respondent employee is not entitled for the said benefits.

6.0 In that view of the matter, the order of the Labour Court, Junagadh dated 03/04/2001 passed in Recovery Application No.466/1992 is quashed and set aside. However, it will be open for the respondent employee to establish her right before the competent Court by filing appropriate application. As I have not decided the legality and validity of the order dated 23/06/2004 passed by the State Government, it will be open to the respondent employee to challenge the same. With the above directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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